IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ELIZABETH SAMMONS, individually and as ADMINISTRATRIX of the Estate of GAIL E. SAMMONS, Deceased, Plaintiffs	)	
v.	)	C.A. No. 03C-12-267-RRC
ST. FRANCIS HOSPITAL, INC., DOCTORS FOR EMERGENCY SERVICES, P.A., EDWARD R. SOBEL, M.D., and FAMILY PRACTICE ASSOCIATES, Defendants.	)	

Submitted: March 13, 2006
Decided: March 31, 2006

UPON PLAINTIFF'S MOTION FOR REARGUMENT
DENIED

Joseph J. Farnan, III, Esquire and Brian E. Farnan, Esquire, Wilmington, Delaware, Attorneys for Plaintiffs.

Mason E. Turner, Jr., Esquire, Wilmington, Delaware, Attorney for Defendant-Doctors for Emergency Services, P.A.

ABLEMAN, JUDGE

Before the Court is Plaintiff's Motion for Reargument of the Court's January 18, 2006 decision finding that the Affidavit of Merit ("the Affidavit") that was filed contemporaneously with the Complaint failed to comply with the statutory standard set forth in 18 *Del.C.* §6853 with respect to defendant Doctors for Emergency Services (hereinafter "DFES").

Procedural Background

Although the procedural history of this case is already set forth in the Court's January 18, 2006 letter decision, it is worth repeating summarily in this Opinion to place the issue before the Court in context.

This is a medical malpractice case that was filed by Plaintiffs in March 2004 against various medical care providers, including Doctors for Emergency Services. Shortly after the case was filed and assigned to a Judge of this Court, several of the Defendants filed a motion seeking a ruling by the Court on whether the Affidavit of Merit and Curriculum Vitae that were filed with the Complaint under seal met the requirements of 18 *Del.C.* §6853[1] as to each of the Defendants. In response, the

[1](a) No healthcare negligence lawsuit shall be filed in the State unless the complaint is accompanied by:

(1) An affidavit of merit as to each defendant signed by an expert witness, as defined in § 6854 of this title, and accompanied by a current curriculum vitae of the witness, stating that there are reasonable grounds to believe that there has been healthcare medical negligence committed by each defendant. If the required affidavit does not accompany the complaint or if a motion to extend the time to file said affidavit as permitted by paragraph (2) of this subsection has not been filed with the court, then the Prothonotary or clerk of the court shall refuse to file the complaint and it shall not be docketed with the court . . .

* * *

assigned Judge ruled that "the Court believes that the affidavits are in order and comply with the statutory language, as to each named defendant." Accordingly, the case was permitted to proceed against all of the Defendants, including DFES. Throughout the pendency of this litigation, neither Defendants nor their counsel were privy to the contents of the affidavit or curriculum vitae as they were kept under seal pursuant to statute. In fact, as will be explained below, it was not until after the filing of this Motion for Reargument and remand by the Supreme Court that the Court directed their disclosure.

The case was reassigned to this Judge for trial and was tried to a jury on December 12, 2005 through December 21, 2005. Following seven days of testimony, the jury returned a verdict in favor of all Defendants on December 21, 2005.

After the presentation of Plaintiff's evidence, DFES counsel became suspicious of the contents of the Affidavit of Merit because Plaintiff had not, even at trial, ever produced a witness who was board certified in

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(c) *Qualifications of expert and contents of affidavit*. – The affidavit(s) of merit shall set forth the expert's opinion that there are reasonable grounds to believe that the applicable standard of care was breached by the named defendant(s) and that the breach was a proximate cause of injury(ies) claimed in the complaint. An expert signing an affidavit of merit shall be licensed to practice medicine as of the date of the affidavit; and in the 3 years immediately preceding the alleged negligent act has been engaged in the treatment of patients and/or in the teaching/academic side of medicine in the same or similar field of medicine as the defendant(s), and the expert shall be Board certified in the same or similar field of medicine if the defendant(s) is Board certified. The Board Certification requirement shall not apply to an expert that began the practice of medicine prior to the existence of Board certification in the applicable specialty.

emergency medicine. No such specialist had been identified during discovery, and Dr. Eric Munoz -- the only "expert" witness who testified against DFES and the members of that practice -- was forced to admit that he had never been board certified in emergency medicine even though he falsely represented that he was on his website. Considering all that had transpired in this case, DFES asked the Court to review once again the Affidavit of Merit, as it now had reason to believe that the Court may have been initially misled.

In a January 18, 2006 letter decision, the Court ruled that the Affidavit did not meet the statutory requirements of 18 *Del.C.* §6853, and that the Plaintiff should not have been permitted to proceed against DFES in the first instance. The Court was at that time prepared to accept suggestions from DFES as to what, if any, remedy to impose, and to conduct a hearing if necessary to determine the nature and extent of the remedy. As a result of Plaintiff's filing of a Notice of Appeal in the Delaware Supreme Court, however, the hearing was never scheduled. Despite the fact that the filing of the appeal divested the Superior Court of jurisdiction, Plaintiff nevertheless subsequently filed the instant Motion for Reargument with this Court.

DFES, realizing that this Court could not address Plaintiff's Motion for Reargument during the pendency of the appeal, and apparently not

wanting the motion to linger, appropriately moved in the Supreme Court for a stay of the proceedings on appeal, so that this Court could address the questions raised in its decision finding the Affidavit of Merit to have been deficient, and conduct a hearing if needed, to determine a remedy for this highly unusual and unfortunate circumstance. DFES submitted to the Delaware Supreme Court that the trial Court should be permitted to hold the hearing and determine the issue of final relief so that the entirety of the matter could then be before the Delaware Supreme Court for review. On February 21, 2006, over the objection of Plaintiff, the Delaware Supreme Court stayed the appeal and entered an Order remanding the case to this Court for further proceedings. The Court retained jurisdiction pursuant to Supreme Court Rule 19(c), thus requiring that the Superior Court return the case to the Supreme Court within 60 days.

The foregoing procedural background establishes that this Court, as a preliminary matter, now has jurisdiction to rule on the Plaintiff's Motion for Reargument of its Order holding the Affidavit to be deficient, and, if denied, this Court must further decide the matter of a remedy.

As soon as this Court received the Remand Order, it wrote to counsel providing a deadline for the response to the Motion for Reargument. The Court then wrote counsel indicating that, since the

trial in this case was concluded, and there was no identifiable interest that required protection by the confidentiality provisions of the statute, it intended to provide copies of the Affidavit to DFES counsel. The Court reasoned that counsel at this stage could hardly be expected to file a meaningful response to the Motion for Reargument without having the opportunity to read the Affidavit first-hand.

Plaintiff objected to the Affidavit's disclosure simply on the basis of the language of the statute. Plaintiff's counsel did not identify any continuing need for confidentiality nor did they provide any explanation for how DFES could be expected to respond to their contentions in the Motion for Reargument without even knowing what the Affidavit contained. After carefully considering the matter, the Court ultimately decided to provide a copy of the Affidavit to DFES counsel. The Court reasoned that, if the Affidavit so plainly complies with 18 *Del.C.* §6853, as Plaintiff argues in its reargument motion, Plaintiff's counsel should be anxious to reveal it, rather than continue to keep Defendant in the dark. Hence, the Affidavit was provided to DFES – with appropriate conditions restricting its use in the event of a retrial – and DFES has now responded to each of Plaintiff's arguments raised in its Motion for Reargument.

Discussion

As will be discussed more fully hereafter, I have considered the Affidavit of Merit, filed by Dr. Eric Munoz against Anita Hodson, M.D. and Robert Rosenbaum, M.D. as employees of DFES, the arguments raised by counsel in the Motion for Reargument and the Response to the Motion, as well as all of the evidence that was presented during the course of this trial. The Motion for Reargument is hereby denied. Even with all of the additional efforts Plaintiff has made to attempt to "rehabilitate" an Affidavit that is inadequate on its face, I am once again constrained to conclude that Plaintiff should never have been permitted to proceed against DFES in the first instance. In short, the Affidavit of Dr. Eric Munoz to support Plaintiff's claim of medical negligence against DFES did not then, and does not now, in light of the evidence produced at trial, pass statutory muster. Therefore, in accordance with the applicable statute, Plaintiff's claims against DFES are hereby dismissed. The Court will, upon application of DFES, consider whether additional remedies are appropriate, but will not offer such remedies *sua sponte*.

I turn now to the arguments raised by Plaintiff in its Motion for Reargument, and my reasons for concluding that the motion must be denied.

I. Dr. Munoz Was Not Qualified Under 18 *Del.C.* §6853 to Execute an Affidavit of Merit Against Board Certified Emergency Physicians

Plaintiff submits in the Motion for Reargument that Dr. Munoz is not subject to the Board Certification requirement in 18 *Del.C.* §6853 because he began the practice of medicine prior to the existence of Board certification in emergency medicine. This portion of the statute reads as follows:

> . . . The Board Certification requirement shall not apply to an expert that began the practice of medicine prior to the existence of Board certification in the applicable specialty.

Plaintiff makes this contention for the first time on reargument. Nowhere in the Affidavit itself is there any mention that Plaintiff is relying on this part of the statute to qualify Dr. Munoz.

The Affidavit submitted by Plaintiff to support its claim that DFES, and in particular two of its employees, Dr. Anita Hodson and Dr. Robert Rosenbaum, breached the standard of care was authored by Dr. Eric Munoz, a physician who practices at the Hospital of the University of New Jersey, is board certified in general surgery, and is not board certified in emergency medicine, although he was at one time eligible to take the board certification exam sometime in the 1980's. Both Dr. Hodson and Dr. Rosenbaum practice in the field of emergency medicine and at all relevant times were board certified emergency physicians

acting in that capacity in connection with the treatment of Gail Sammons. Dr. Munoz was not board certified in emergency medicine at the time he filed his Affidavit nor at the time he testified against these two emergency physicians.

The statute that requires the filing of an Affidavit of Merit, 18 *Del.C.* §6853, became the law in Delaware in July 2003, and represents a clear legislative intention that physicians are entitled to be judged and criticized only by their peers – that is, certified physicians practicing and certified in the same specialty as those physicians whose care is being scrutinized – even before a medical negligence lawsuit can proceed against them. The statute explicitly legislates that Affidavits of Merit are not to be received from experts who merely believe themselves to be qualified to render opinions about specialties other than their own, but are not qualified by the standards for Board certification that apply to all specialists in that particular field.

Indeed, Dr. Munoz is precisely the type of "expert" that the statute is intended to preclude from providing opinions in specialties in which he is not qualified. The record in this case demonstrates that Dr. Munoz, while Board certified only in surgery, has in the past testified against a whole assortment of doctors in a variety of fields of medicine far removed from his specialty of trauma surgery, including gynecological oncologists,

orthopedic surgeons, dermatologists, gynecologists, neurologists, obstetricians, hand surgeons, and other emergency surgeons, as well as emergency medicine like physicians Drs. Hodson and Rosenbaum.

While Dr. Munoz now claims -- but did not so state in his Affidavit -- that he is qualified to file an affidavit against emergency doctors because he began practicing medicine before the American Board of Emergency Medicine began board certification of emergency physicians in 1980, there is no mention in the Affidavit or Curriculum Vitae of when Dr. Munoz began practicing medicine, only that he began his residency program -- in surgery -- in 1975. Nor does the Affidavit set forth the fact that Dr. Munoz began practicing before the American Board of Emergency Medicine implemented the process of board certification for emergency physicians, or that the year such certification began was 1980. This fact is critical, in the Court's judgment, because it demonstrates that counsel never intended to rely on that language in the statute at the time the Affidavit was filed, but are simply interposing the argument after the fact in an effort to cover for what is clearly an inadequate affidavit, filed by a physician who is simply not qualified to judge the actions or inactions of these emergency physicians. To be sure, if counsel were intending to rely on the fact that Dr. Munoz began the practice of medicine before the American Board of Emergency Medicine began board certification, at the very least, the affidavit should

have provided this information to the Court, as a Judge would have no independent knowledge of the dates of recognition of board certification in any particular specialty.

More importantly, the purpose of the language in 18 *Del.C.* §6853(c) that allows for "grandfathering" is not intended to provide any doctor who has been practicing for a long time *carte blanche* to submit Affidavits of Merit against any doctor in any specialty other than the one in which he or she has been practicing. The intent of 18 *Del.C.* §6853 is to permit a physician who began practicing the same specialty in question prior to board certification being available to testify about that specialty because of his or her longtime experience in that field. It is not intended to permit a doctor who has never been trained in the specialty and has not been board certified in it to execute an Affidavit of Merit against a physician in that specialty. Physicians who began practicing a particular specialty prior to the certification availability are traditionally grandfathered by hospitals and other medical institutions.

Whenever Dr. Munoz did begin practicing medicine – which is nowhere stated in either the Affidavit or his Curriculum Vitae – it was not as an emergency medicine specialist but as a surgeon. Despite the fact that Dr. Munoz has for sometime misrepresented himself as being board

certified in emergency medicine, and continues to do so,[2] the statute cannot under any circumstances be read to give free rein to professional witnesses such as Dr. Munoz to provide an opinion as to a breach of the standard of care in any medical specialty whose certification requirements came into being after he began his surgical practice. While Dr. Munoz has seen fit to provide testimony against doctors who practice in many other specialties in a number of different states, regardless of his lack of expertise or certification in those various fields, those other states, such as Missouri, Kansas, Pennsylvania, West Virginia, Ohio and Florida, may not have the strict statutory protection that Delaware's law provides. In Delaware, however, there is no question that our statute does not allow Dr. Munoz to opine about any specialty whose certification post-dated his entry into the practice of medicine.

There is another equally compelling factor in this case that renders Dr. Munoz specifically not qualified to render an opinion against emergency physicians. As was noted in the Court's January 18, 2006 Decision, the Court believes that the Judge who originally reviewed the Affidavit of Merit was misled into concluding that the Affidavit was sufficient because of the notation that read "board eligible 1984-1988." This Court now knows from his trial testimony that Dr. Munoz is not,

[2]As of the time of the writing of this decision, Dr. Munoz' hospital website still lists his credentials as being "board certified" in emergency medicine, which the doctor admitted was untrue at trial and which he promised during his testimony to correct. Yet, he has still not done so.

and has never been, board certified. If the Court can assume that the affidavit is true and correct, it can also conclude that, while Dr. Munoz may at one time have been eligible to take the certification exam, at least for the past eighteen years he has not been eligible to do so. Thus, when he filed the Affidavit in this case, his experience and expertise was such that he no longer even qualified to sit for the exam. Thus, under Delaware law, he has never possessed either the credentials or experience to provide an Affidavit of Merit against the DFES defendants in this case.

II. Dr. Munoz Does Not Practice In "The Same or Similar Field of Medicine As the Defendants"

The statute further requires that, in addition to being licensed to practice medicine as of the signing and submitting of an Affidavit of Merit the physician also:

> in the 3 years immediately preceding the allegedly negligent act has been engaged in the treatment of patients and/or in the teaching/academic side of medicine in the same or similar field of medicine as the defendants. . .

Even though Plaintiff must concede that Dr. Munoz is not board certified in emergency medicine, plaintiff argues that the statute only requires that the expert be board certified in a similar field. As a surgeon, Plaintiff submits, Dr. Munoz is board certified in a similar specialty and in some respects that specialty is a "higher certification." Plaintiff makes this assertion in conclusory fashion, without providing

any factual basis for the Court to reach the conclusion that surgery and emergency medicine are similar and without defining what is meant by "higher certification." The Court rejects Plaintiff's claim that these two specialties are sufficiently similar to qualify Dr. Munoz under the statute, nor can it credit Dr. Munoz' trial testimony that, because he served as President of the hospital, he was so qualified on the basis of his oversight responsibilities.

In the first place, it does not require a medical degree, but only one trip to an emergency room and one to an operating room, to know that the skills, requirements, depth of knowledge, and demands of an emergency physician are far different from those of a surgeon. As Dr. Daniel R. Wehner, who is a board certified emergency physician, testified at trial, emergency medicine requires an E.R. doctor to treat dozens, even hundreds, of patients on a day or a night shift, and to sift through the needs of each individual patient in order to determine when, for whom, and in what order these patients should be treated on the basis of urgency. Emergency doctors do not have the luxury of careful planning, examination, and preparation in advance of performing a procedure, and they rarely if ever are able to treat only one patient at a time. The triage system alone, about which emergency doctors must be particularly knowledgeable, places these physicians in a specialty that is far different from a surgical practice, where only one patient is being treated at a

time. Dr. Munoz' testimony suggesting that these two specialties are similar was simply not credible and was offered at trial solely for the purpose of bolstering his credentials in order to give the impression that he was more qualified than he actually is. Given that Dr. Munoz has no compunction about misrepresenting his credentials on the internet, it is not difficult for the Court to disregard other aspects of his testimony that do not comport with reason and common sense.

Moreover, as DFES points out in response, Plaintiff's argument might have some persuasive merit if this case presented any surgical issues. The fact is, however, that there was nothing surgical in nature about Plaintiff's condition and there were no issues at trial that had anything to do with surgery. Rather, the trial involved the diagnosis and treatment of sickle cell crisis and Plaintiff's contention that she had sepsis. Dr. Munoz is no more qualified to provide an opinion about the diagnosis and treatment of sepsis than he is to testify against gynecologists, dermatologists, neurologists and other specialists against whom he so freely renders opinions. The two board certified emergency physicians whose conduct was at issue in this case, and the defendant DFES which employed them, deserve better than to have this entire lawsuit, for which they have invested enormous time and expense in

their defense of it, rest solely and exclusively on the opinion of someone as disreputable and unqualified as Dr. Munoz.[3]

III. Plaintiff's Claim That The Judge Originally Assigned to This Case Must Decide This Motion

Plaintiff's counsel argues that they cannot adequately respond to the Court's Order "without the benefit of [the originally assigned Judge's] reasoning when he approved the Affidavit of Merit." They therefore insist that this Motion be assigned back to him for his consideration. Besides the fact that the originally assigned Judge expressly delegated decision on the motion to the Trial Judge, and besides the fact that he was in agreement with the rulings that were made, this argument represents nothing more than a blatant effort to "judge-shop" so as to continue to mislead the Court.

While it is true that the Affidavit of Merit must be facially sufficient, notwithstanding what may have ultimately transpired at trial, it is difficult to view this case – and the issue now before the Court – without the 20-20 hindsight that the Court's view of the trial evidence affords.

[3]Perhaps the most telling indication that Dr. Munoz is not qualified to execute an Affidavit of Merit against this defendant was his response to counsel's question concerning the "T-sheet." Dr. Munoz did not even know to what the term referred. Yet, as explained by the physicians who were board certified emergency doctors, the T-sheet is the standard form utilized in virtually all emergency departments across the country.

The statute merely reinforces what has always been necessary as a practical matter for a medical malpractice claim to succeed. That is, a duly qualified physician in the same field must provide an expert opinion to support both a breach of the standard of care and causation. The statute does nothing more than codify what competent Plaintiff's counsel have always done; but now this feature of the well-prepared, well-founded medical negligence case has become a statutory prerequisite to filing an action against a medical care provider. Its obvious purpose is to spare a defendant the time and expense of defending a suit that lacks merit. In fact, the Delaware Supreme Court in *Beckett v. Beebe Medical Center, Inc.*[4] recently reiterated the intent of the statute:

> The intent of the General Assembly in enacting this provision was to reduce the filing of meritless medical negligence claims. By requiring the Affidavit of Merit, the General Assembly intended to require review of a patient's claim by a qualified medical professional, and for that professional to determine that there are reasonable grounds to believe that the health care provider has breached the applicable standard of care that caused the injuries claimed in the complaint.

Unfortunately, what the Affidavit of Merit statute is intended to avoid is precisely what occurred in this case. The Plaintiff's claim against DFES was never supported by appropriate expert testimony -- either before it was filed, during discovery, or at trial -- and while the jury verdict fully exonerates DFES of any wrongdoing, it hardly makes up for the injustice that has been suffered by these defendants.

[4]Del. Supr., No. 404, 2005, pp. 7-8, Ridgely, J. (March 28, 2006).

To be sure, the assigned Judge's original finding did allow this case to proceed when it should have been dismissed. But, to suggest that he alone should be required to decide this issue is yet one more effort on Plaintiff's part to perpetuate this unfortunate injustice. Plaintiff's motives are transparent. Counsel wants the "benefit of [the assigned Judge's] reasoning" because that Judge did not have the "benefit" of observing Dr. Munoz at trial, as he shamelessly acknowledged his lack of expertise, his deception in representing himself to be something he is not, and his pitiful performance during cross-examination when DFES counsel pilloried his reputation, and his opinion, and exposed him as the hypocrite that he is.[5]

IV. DFES Has Not Waived Its Right To Challenge the Court's Finding

Finally, Plaintiff submits that DFES has "waived" its right to challenge the affidavit and the Superior Court's initial conclusion that the affidavit passed statutory muster because it did not timely file a Motion for Reargument of that Judge's ruling. Plaintiff's counsel points

[5]Dr. Munoz has recently been elected to the New Jersey legislature. In addition to being a surgeon, he acknowledged in cross-examination, that he is, in his words, "a public servant, proud to say it." In that capacity, he has proposed legislation that requires that an expert in a medical malpractice case in New Jersey "should be Board certified in the same specialty and during the year immediately preceding the date of the occurrence that is the basis of the claim, shall have devoted a majority of his professional time to the practice of **that identical specialty**." At trial, Dr. Munoz agreed that this legislation, which he sponsored, would be in the best interest of his constituents in New Jersey. Apparently, he has no difficulty providing testimony against doctors outside his specialty when he travels to Delaware or the many other states where he so frequently testifies.

out that, as of April 21, 2005, DFES counsel knew that Dr. Munoz was not board certified in emergency medicine and that DFES was thus not misled and should be precluded from challenging the Affidavit of Merit at this late stage of the litigation. Remarkably, Plaintiff's counsel advances this argument while at the same time they continue to argue that the affidavit should remain confidential and not be disclosed to these defendants.

The short answer to this claim is that a Motion for Reargument could not possibly have been contemplated by defense counsel without full knowledge of the substance of the affidavit. What was counsel to do? Suggest to the Court that it was wrong without knowing what the affidavit contained? Argue to the judge that he should revisit his ruling because his judgment is not to be trusted? An attorney with any respect for the Court would have had no choice but to accept, with due deference, the Court's finding, precisely because counsel had no way of knowing who signed the affidavit, what the expert's specialty was, or most importantly in this case, the credentials of the affiant.[6]

As defense counsel points out, it was only after Dr. Munoz admitted at trial under oath that he was not board certified in emergency medicine, that Defendant DFES rightfully became suspicious that Dr.

[6]For all DFES knew, the affidavit could have been signed by someone other than Dr. Munoz who was board certified in emergency medicine.

Munoz may also be the same doctor who had sworn to the opinion contained in the Affidavit of Merit.

V. The Remedy To Be Imposed

Finally, plaintiff argues that, even if the Affidavit is deemed deficient, her claims against DFES should not be dismissed as Plaintiff would still have had an additional week after the original ruling on the Affidavit to file a second Affidavit of Merit before the statute of limitations would have expired. Plaintiff is apparently now representing to the Court -- after a lengthy two-week trial resulting in a verdict in favor of all Defendants after only approximately 3 hours of jury deliberation -- that she is now prepared to file an Affidavit of Merit in Support of the Complaint against DFES by a physician who *is* board certified in emergency medicine.

In order to grant this unprecedented request, the Court would have to ignore the mountain of evidence at trial that established that there was absolutely no basis whatsoever to support Plaintiff's theory of the case. It was clear to the Court that Plaintiff's counsel had been ill-advised that Plaintiff had died of sepsis. Despite all of the evidence to the contrary – including an autopsy report establishing conclusively that Plaintiff was not septic -- counsel doggedly pursued this theory, no matter how many highly qualified experts had concluded otherwise, and

no matter how convincing and persuasive the evidence was that established that Plaintiff did not die as a result of anything that DFES did or did not do.

Moreover, to grant Plaintiff's request would require the Court to ignore the fact that Dr. Munoz's testimony was so lacking in reliability or credibility that he gave new meaning to the term "hired gun." It would demand of the Court that it ignore the fact that Dr. Munoz's performance in this trial diminished his own profession as well as those of the legal profession who have sought fit to claim him as an "expert."

The damage to Defendants has already been inflicted here. The jury has announced its verdict, which, in my judgment, was overwhelmingly supported by credible evidence. To allow this litigation to proceed any further, by permitting the filing of a new Affidavit of Merit, would serve no purpose but to further victimize the doctors who have had to endure this unfounded assault against their professional reputations. At this stage, the Court is looking at damage control, that is, how it can remedy the injustice that has already occurred, not ways to compound it.

Conclusion

For all of the foregoing reasons, the Motion for Reargument of this Court's January 18, 2006 decisions dismissing this case for failure to comply with 18 *Del.C.* §6853 is hereby **denied**. The Court will entertain further requests for relief by DFES if made within 10 days of this Order. In the event a hearing is necessary, I may have to request additional time from the Supreme Court if a hearing cannot be scheduled within the sixty days required by Supreme Court Rule 19(c).

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary
cc: Joseph J. Farnan, III, Esquire
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